



UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA

In re  
AMERICAN COMPUTER AND DIGITAL  
COMPONENTS, INC.,  
Debtor.

Case No. LA 04-19259 TD  
Adv. No. LA 04-02239 TD  
Chapter 7

RICHARD K. DIAMOND, Chapter 7  
Trustee,

Plaintiff.

v.

R&R ELECTRONICS, INC., a  
Georgia corporation

Defendant.

MEMORANDUM OF DECISION

DATE: July 25, 2005  
TIME: 9:00 a.m.  
PLACE: Courtroom 1345

**INTRODUCTION**

This adversary proceeding was brought by the Chapter 7 Trustee of American Computer and Digital Components, Inc. (ACDC), against R&R Electronics, Inc. (R&R), for money allegedly owed by R&R to ACDC. It was tried on July 25, 2005, pursuant to my trial setting order entered March 23, 2005, by written declaration. The plaintiff introduced the declaration of David R. Bell, a certified public accountant (CPA), of Brandlin and Associates, a forensic

1 accounting firm retained initially pre-petition by creditor Harris  
2 Bank to review ACDC's records, and later by the trustee, plaintiff  
3 herein, to evaluate ACDC's assets and liabilities. (Decl. of David  
4 R. Bell (Bell Decl.) ¶¶ 1, 4-5.) Prior to ACDC's bankruptcy  
5 filing, Mr. Bell worked at the business premises of ACDC, pursuant  
6 to a security agreement between Harris Bank and ACDC. Harris Bank  
7 was concerned about its multi-million dollar loan to ACDC. As a  
8 result, Harris Bank hired Brandlin and Associates, who then  
9 delegated Mr. Bell and others to investigate the business  
10 activities and financial records of ACDC. As a result, Mr. Bell  
11 spent 40-50 hours per week, for approximately four months, working  
12 at the business premises of ACDC. During that time, Mr. Bell  
13 interviewed ACDC officers and employees and had access to ACDC's  
14 accounting records and information, including ledgers, invoices,  
15 shipping documents, and records relating to ACDC's accounts  
16 receivable and accounts payable. Mr. Bell also performed a  
17 complete physical inventory of the contents of ACDC's warehouses.

18 Using the software and accounting records of ACDC, Mr. Bell  
19 generated an Accounts Receivable aging report (the A/R aging  
20 report). (Bell Decl. ¶ 7; Ex. 1.) As of March 31, 2004, this  
21 report reflects an outstanding balance of \$3,335,414.30 due from  
22 R&R to ACDC. (Ex. 1.) Mr. Bell also photocopied from ACDC's  
23 files, and plaintiff introduced as evidence, ACDC's invoices to  
24 R&R. (Ex. 2.) As Mr. Bell's testimony established, including his  
25 responses to searching cross examination by the defendant, these  
26 invoices reflect charges for various types of computer hardware

1 shipped by ACDC and received by R&R. (Ex. 2.) The charges to R&R  
2 reflected in the invoices introduced by plaintiff total  
3 \$2,308,404.48. (Bell Decl. ¶ 8.)

4 On the basis of his evidence, plaintiff requests a judgment  
5 against R&R in the aggregate amount of \$3,335,414.30 plus pre- and  
6 post-judgment interest. Plaintiff asserts alternative theories in  
7 support of his request for judgment in the amount of \$3,335,414.30.  
8 First, plaintiff asserts that the evidence supports a claim for  
9 goods sold and delivered. Alternatively, plaintiff asserts that  
10 the evidence supports a claim for an account stated.

11 Defendant R&R did not introduce any direct evidence but filed  
12 a brief declaration of Ranjeet Kirpilani, the CEO and principal of  
13 R&R. On plaintiff's motion, I struck Mr. Kirpilani's declaration.  
14 At trial, defendant attempted to call Mr. Kirpilani as a witness.  
15 Again on plaintiff's motion, I rejected defendant's request to call  
16 Mr. Kirpilani as a witness, for reasons announced on the record.

## 17 DISCUSSION

### 18 1. Mr. Bell's Qualification as an Expert Witness

19 Federal Rule of Evidence 702,<sup>1</sup> which governs the admissibility  
20 of expert testimony, provides:

21 If scientific, technical, or other specialized  
22 knowledge will assist the trier of fact to understand the  
23 evidence or to determine a fact in issue, a witness  
24 qualified as an expert by knowledge, skill, experience,  
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26 <sup>1</sup>All references herein to rules are to the Federal Rules of  
Evidence.

1 training, or education, may testify thereto in the form  
2 of an opinion or otherwise, if (1) the testimony is based  
3 upon sufficient facts or data, (2) the testimony is the  
4 product of reliable principles and methods, and (3) the  
5 witness has applied the principles and methods reliably  
6 to the facts of the case.

7 Mr. Bell's testimony draws upon his "technical" knowledge as a  
8 CPA, as well as his "other specialized" knowledge, gained through  
9 years of experience in the accounting field and during the course  
10 of his investigation of ACDC's assets and liabilities. See Kumho  
11 Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 147-48 (1999) (noting  
12 frequent overlap between "scientific," "technical," and "other  
13 specialized" knowledge, and holding that the same standard governs  
14 the admissibility of each type). Mr. Bell's knowledge is helpful  
15 in determining a fact in issue, namely, whether ACDC sold and  
16 delivered goods to R&R. Mr. Bell is a licensed CPA, with  
17 approximately 12 years of training and on-the-job experience as an  
18 accountant. He has been employed by Brandlin and Associates, a  
19 forensic accounting firm, for approximately two years. Over the  
20 past 12 years, Mr. Bell has conducted numerous audits of public and  
21 private companies. As a result, he has extensive experience  
22 interviewing business employees and reviewing and analyzing the  
23 books and records of businesses under audit or other examination.  
24 I conclude from his testimony and demeanor that Mr. Bell's  
25 knowledge, skill, experience, training, and education qualify him  
26 to testify as an expert in this case within the scope of Rule 702.

1 Mr. Bell's testimony is based upon sufficient data. His  
2 testimony is the product of reliable principles and methods. He  
3 has applied those principles and methods reliably to the facts of  
4 this case, as required by Rule 702. Mr. Bell based his testimony  
5 on his four month on-site investigation of ACDC's personnel,  
6 assets, liabilities, and business records and practices, during the  
7 course of which Mr. Bell discovered documents such as the invoices  
8 introduced by plaintiff. The invoices appear to have been ordinary  
9 business records of ACDC prepared in accordance with the  
10 requirements of Rule 803(6). I find that Mr. Bell's testimony is  
11 the product of the principles and methods used by accountants in  
12 performing forensic accounting work,<sup>2</sup> and that Mr. Bell has  
13 reliably applied those principles and methods to this case. For  
14 these reasons, I find that plaintiff has established, by a  
15 preponderance of the evidence, that Mr. Bell is qualified to give  
16 expert testimony in this matter. Rule 104(a); Rule 702; see  
17 Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 593 n.10 (1993).  
18 Additionally, I find that there is no basis to exclude Mr. Bell's  
19 testimony under Rule 403.

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23 <sup>2</sup>Although Mr. Bell does not have the formal title of "forensic  
24 accountant," his knowledge and experience qualify him to testify on  
25 "forensic accounting" matters. See Hon. Barry Russell, Bankr.  
26 Evid. Manual § 702.2 (West 2005 ed.) (specific degrees or  
certificates not required to qualify witness as expert).

## 2. Admissibility of the Invoices into Evidence

I also find that the ACDC invoices introduced by plaintiff are admissible pursuant to the "residual exception" to the hearsay rule found in Rule 807. The invoices were offered as evidence of a "material fact," namely, that R&R purchased and took delivery of goods from ACDC. Rule 807. The invoices are "more probative on [that point] than any other evidence which [plaintiff] can procure through reasonable efforts." Rule 807. In my experience, it is rare for a bankruptcy trustee in cases involving a failed business to produce evidence more probative than invoices, prepared and maintained apparently in the ordinary course of business by the debtor, evidencing sales to an account debtor such as R&R. It would not make sense to me to exclude such documentary evidence here. It appears to be the best evidence the trustee reasonably could have procured. It also appears to be trustworthy evidence, properly prepared and authenticated to the extent possible under the circumstances. The "interests of justice," and the "general purposes" of the Rules of Evidence, are best served here by admission of the invoices into evidence. Rule 807. Therefore, I find that the invoices, while not specifically covered by the hearsay exceptions set forth in Rule 803, have "equivalent circumstantial guarantees of trustworthiness" and should be admitted into evidence.<sup>3</sup> Rule 807; see Rule 803(6).

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<sup>3</sup>Because I do not find any liability based on the A/R aging report, I do not discuss its admissibility into evidence.

1           **3.     Plaintiff's Claim for Account Stated**

2            "An account stated is a manifestation of assent by debtor and  
3 creditor to a stated sum as an accurate computation of an amount  
4 due the creditor. A party's retention without objection for an  
5 unreasonably long time of a statement of account rendered by the  
6 other party is a manifestation of assent. The account stated does  
7 not itself discharge any duty but is an admission by each party of  
8 the facts asserted and a promise by the debtor to pay according to  
9 its terms." Restatement (Second) of Contracts § 282. The parties'  
10 assent may be either express or implied. Id.

11           In this case, the invoices, which date from December 26, 2003,  
12 to January 12, 2004, show that ACDC and R&R transacted business  
13 with each other over a period of at least several weeks. (Ex. 2.)  
14 ACDC documented these transactions carefully and in detail. R&R's  
15 outstanding balance purportedly is reflected in the A/R aging  
16 report. (Ex. 1.)

17           Unfortunately for plaintiff, neither the A/R aging report  
18 itself nor any other evidence introduced by the plaintiff  
19 establishes any agreement between ACDC and R&R with respect to the  
20 account balance of \$3,335,414.30 as stated in the A/R aging report.  
21 Even if the A/R aging report reflects an accurate statement of  
22 ACDC's or Mr. Bell's calculation of the amount due, there is no  
23 evidence that R&R ever saw such a statement prior to the filing of  
24 the Bell declaration for this trial. Plaintiff's evidence fails to  
25 establish R&R's express or implied agreement to the account balance  
26 stated by the A/R aging report.

1 Compare California Bean Growers Assn. v. Williams, 82 Cal. App.  
2 434, 442-43 (1927) (debtor's failure to object within a reasonable  
3 time to a statement rendered by the creditor gave rise to claim for  
4 account stated). For this reason the plaintiff's evidence is  
5 insufficient to support his claim for an account stated in the  
6 amount of \$3,335,414.30 or in any amount.

7 Under the circumstances, it is unnecessary to discuss whether  
8 Brandlin and Associates was authorized to generate the A/R aging  
9 report or the sufficiency of the report itself.

10 **4. Plaintiff's Claim for Goods Sold and Delivered**

11 R&R's liability for failure to pay for computer hardware sold  
12 and delivered is determined under the Uniform Commercial Code,  
13 since computer hardware qualifies as "goods." See Cal. UCC § 2105.  
14 The UCC provides that if a buyer accepts goods from a seller and  
15 fails to pay for the goods, the seller may sue for the contract  
16 price. Cal. UCC § 2709. The evidence must show that the buyer  
17 requested delivery of certain goods, that the buyer agreed to pay a  
18 stated price for the goods, that the seller furnished the goods  
19 with the buyer's knowledge and consent, and that the buyer failed  
20 to pay the stated price. Daniger v. Hunter, 114 Cal. App. 2d 796,  
21 798 (1952); see Am. Jur. Sales § 1028.

22 I find that the invoices introduced by plaintiff establish  
23 that ACDC furnished the goods reflected in the invoices at R&R's  
24 request and with R&R's knowledge and consent. Each invoice states  
25 that certain goods were shipped from ACDC to R&R "via truck." The  
26 quantities and prices of the goods, as well as the dates of



1 shipment by ACDC, are clearly stated on each invoice. Each invoice  
2 bears a "Received" stamp, which is initialed and dated some days  
3 after the shipment of the goods. I am persuaded by Mr. Bell's  
4 testimony, where he stated at trial, "The 'Received' date on the  
5 stamp is subsequent to the invoice date, so that is a good  
6 indication that the goods were received [by R&R] subsequent to the  
7 generation of the invoice."

8 The invoices also establish that R&R agreed to pay the price  
9 as stated on the invoices. There is no evidence that R&R has paid  
10 for any of the goods delivered, and defendant does not assert that  
11 any such payment occurred. In the end, the plaintiff's evidence is  
12 uncontradicted by any evidence from R&R. Accordingly, I find R&R  
13 liable for the charges reflected in the invoices, for computer  
14 hardware sold and delivered by ACDC to R&R, in the total amount of  
15 \$2,308,404.48.

16 **5. Plaintiff is Entitled to Pre-Judgment Interest**

17 "If a contract entered into after January 1, 1986, does not  
18 stipulate a legal rate of interest, the obligations shall bear  
19 interest at a rate of 10 percent per annum after a breach." Cal.  
20 Civ. Code Ann. § 3289 (West 2004). Plaintiff requests an award of  
21 pre-judgment interest at the rate of 10 percent from August 4, 2004  
22 (the date the complaint was filed), to the date of entry of  
23 judgment. Accordingly, I hereby award interest to the plaintiff  
24 at the rate of 10 percent per year on the total sum of the  
25 invoices, \$2,308,404.48. On this basis, the interest allowable is  
26

1 \$632.44 per day.<sup>4</sup> 362 days have elapsed from August 4, 2004 until  
2 August 1, 2005. Accordingly, plaintiff is entitled to \$228,943.28  
3 in pre-judgment interest.<sup>5</sup>

4 **6. Conclusion**

5 The invoices in Plaintiff's Exhibit 2 establish R&R's  
6 liability in the total principal sum of \$2,308,404.48. Plaintiff  
7 is also entitled to pre-judgment interest of \$632.44 per day, from  
8 August 4, 2004, until the date judgment is entered by this court.  
9 Accordingly, the plaintiff is entitled to pre-judgment interest in  
10 the amount of \$228,943.28. A separate judgment will be entered  
11 based on the foregoing in favor of plaintiff and against R&R  
12 Electronics, Inc.

13 SO ORDERED.

14  
15 DATED: August 1, 2005



16  
17 THOMAS B. DONOVAN

18 United States Bankruptcy Judge  
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26 <sup>4</sup>(\$2,308,404.48 x .10) ÷ 365 = \$632.44

<sup>5</sup>\$632.44 x 362 = \$228,943.28

1 NOTICE OF ENTRY OF JUDGMENT OR ORDER  
2 AND CERTIFICATE OF MAILING

3 TO ALL PARTIES IN INTEREST LISTED BELOW:

4 1. You are hereby notified that a judgment or order entitled:

5 **MEMORANDUM OF DECISION**

6 was entered on 8/2/05.

7 2. I hereby certify that I mailed a true copy of the order or  
8 judgment to the persons and entities listed below on 8/3/05.

9 Plaintiff

10 Chapter 7 Trustee  
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22 Dated: 8/3/05

23   
24 \_\_\_\_\_  
25 Clerk  
26